

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

1141 REALTY OWNER LLC, et al.,

Case No. 18-12341 (SMB)

Chapter 11

Jointly Administered

Debtor.
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RESPONSE AND PARTIAL OBJECTION
TO DEBTORS' FIRST AMENDED CHAPTER 11 PLAN

I, Jessica J. Kastner, an attorney admitted to the practice of law in the Southern District of New York, am an associate in the law firm Dorf & Nelson LLP, attorneys for creditors You Gotta Have Faith LLC and Robert K.Y. Chan (collectively "Creditors"), and respectfully submit this limited object to the Debtors' Proposed First Amended Chapter 11 Plan filed February 20, 2019 (the "Amended Plan") for the reasons set forth herein.

1. Robert K.Y. Chan ("Chan") served as the Manager for Debtor Flatiron Hotel Operations LLC ("Debtor Flatiron") from April 16, 2015 through August 31, 2015. As stated in his Amended Proof of Claim, annexed hereto as **Exhibit A**, Chan is an unsecured creditor of Debtor Flatiron in an amount stated therein for monies advanced.

2. Chan is also the sole owner and managing member of You Gotta Have Faith LLC.

3. You Gotta Have Faith LLC is a minority interest holder in 1141 Realty LLC, holding ten percent (10%) interest therein. See Section IV of the Operating Agreement for 1141 Realty LLC annexed hereto as **Exhibit B**, at 4.01. The other ninety percent (90%) of 1141 Realty LLC is owned by Main Team Hotel LLC. **Id.**

4. Per 1141 Realty LLC's Operating Agreement, You Gotta Have Faith LLC's minority interest is equal to, and can be bought out with, a value of ten percent (10%) of the fair market value of the real property owned by the Debtor, 1141 REALTY OWNER LLC, known as FLATIRON HOTEL, 9 West 26th Street (aka 1141 Broadway), New York, New York County, New York 10010 ("Subject Property"), in excess of \$38,000,000.00. In other words, You Gotta Have Faith LLC's interest is valued by calculated by taking 10% of the difference between \$38,000,000.00 and the fair market value of the Subject Property.¹ See **Exhibit B**, Section 4.01, 9.02.

5. In addition to valuing You Gotta Have Faith LLC's minority interest as 10% of the fair market value of the Subject Property, in excess of \$38,000,000.00, You Gotta Have Faith LLC is also entitled to 10% of any capital transactions, including but not limited to any sale proceeds from the Subject Property in excess of \$38,000,000.00. See **Exhibit B**, at Section 4.01, 4.02, 6.06(c).

6. As of the date of the Petition, the Debtor 1141 REALTY OWNER LLC ("Debtor 1141 Realty Owner") is wholly owned by 1141 Realty LLC.

7. In the Amended Plan, the Debtors propose a change of its ownership and request this Court's approval of same.

8. In the Amended Plan, Class 6 Interests are categorized as "Interests in the Debtor."

9. Per Section 3.09 of the Amended Plan, the Debtors propose the following with respect to Class 6 Interests:

¹ Based on the Declaration of Edward R. Eschmann in Further Support of Debtors' Motion For Entry of Interim and Final Orders Authorizing The Debtors To Obtain Post-Petition, Priming, Senior Secured, Superpriority Financing Pursuant To 11 U.S.C. §§ 105, 362, 364(C) And 364(D), Bankruptcy Rule 4001(C) and Local Bankruptcy Rule 4001-2, the "as complete" value of the Subject Property is \$52,000,000.00. The difference between \$38,000,000.00 and \$52,000,000.00 is \$14,000,000.00. Ten percent (10%) of \$14,000,000.00 is \$1,400,000.00. As such, based on this appraisal value, You Gotta Have Faith LLC's minority interest in 1141 Realty LLC, as well as its claim for sale proceeds of the Subject Property, is worth and valued at \$1,400,000.00.

All existing membership interests in the Debtors shall be cancelled, and the Reorganized Debtors' membership interests shall be reissued as follows: (i) with respect to Owner, Fifty (50%) Percent shall be owned by 1141 Realty LLC and Fifty (50%) Percent shall be owned by Premier Nomad LLC; and (ii) with respect to Operator, One Hundred (100%) Percent shall be owned by Premier Nomad LLC, provided, however, if the Debtors sell their real property pursuant to Section 3.06, the membership interests shall revert back to as they existed on the Petition Date.

10. Upon information and belief, this proposed treatment of Class 6 interests is based on an agreement between Main Team Hotel LLC, as majority member of 1141 Realty LLC, and Premier Nomad LLC ("Premier").

11. As a minority member, You Gotta Have Faith LLC was not consulted, nor was its input or agreement solicited with regard to the transfer of ownership. Indeed, You Gotta Have Faith LLC was not even informed of the purported transfer until months later.

12. Upon information and belief, the agreement between Main Team Hotel LLC and Premier Nomad LLC requires that You Gotta Have Faith's minority interest in 1141 Realty LLC be bought out and purchased prior to any transfer of ownership of the Debtor 1141 Realty Owner.

13. While You Gotta Have Faith LLC has no objection to this course of action or to selling its minority interest in exchange for fair market value in accordance with the governing documents, its input or agreement was not solicited to date. As stated in Footnote 1 above, based on the appraised values previously submitted in this matter, You Gotta Have Faith LLC's minority interest is valued at \$1,400,000.00.

14. Neither You Gotta Have Faith LLC nor its counsel have been contacted by any representative of Debtors, 1141 Realty LLC, or Main Team Hotel LLC, with regard to the purchase or transfer of You Gotta Have Faith LLC's minority interest as required by the transfer of ownership cited in Debtors' Amended Plan.

15. Further, Debtor's Plan makes no mention of the consideration which is being received in exchange for the transfer of its ownership interests, or how said consideration should be divided or distributed. Upon information and belief, Main Team Hotel LLC, as majority member of 1141 Realty LLC is to receive valuable consideration in exchange for conveying 50% ownership interest of Debtor to Premier. However, due to confidentiality provisions, that information is not disclosed herein. Nevertheless, the Trustee and this Court should be informed of all of the relevant information regarding the proposed transaction. In this regard, Debtors' Amended Plan is incomplete, fails to comply with 11 U.S. Code § 1129 and cannot be confirmed as written.

16. Accordingly, upon information and belief, as further explained herein, the Amended Plan, as written, does not meet the requirements for confirmation pursuant to 11 U.S. Code § 1129.

17. 1141 Realty LLC is a member of Class 6 Interest Holders whose interest will be impaired pursuant to Section 3.09 of the Amended Plan. As a minority member of 1141 Realty LLC, You Gotta Have Faith LLC respectfully requests this Court's consider the divesture and impairment of its interests as stated in the Amended Plan and as proposed by the Debtor 1141 Realty Owner.

18. For the reasons stated here, the Amended Plan is not accepted as written, as it is incomplete and/or inadequate with respect to the transfer of Debtor 1141 Realty Owner's ownership interests, a Class 6 impaired interest.

19. Further, if the Debtor 1141 Realty Owner were liquidated pursuant to Chapter 7, You Gotta Have Faith LLC would be entitled to \$1,400,000.00 upon the liquidation of Debtors' Asset, the Subject Property, based on the appraisal value of \$52,000,000.00. As stated above,

none of this is mentioned or accounted for in Debtors' Amended Plan. As such, it is respectfully submitted that Debtors' Amended Plan fails to comply with 11 U.S. Code § 1129 (a)(7).

20. In addition, Jagdish Vaswani, as the sole member of Main Team Hotel LLC, and Main Team Hotel LLC, who is the majority member of 1141 Realty LLC, who is the current, sole owner of the Debtor 1141 Realty Owner, may be considered "insiders" per 11 U.S. Code § 101(a)(31) and § 1129 (a), *et. seq.*

21. In this regard, it is also respectfully submitted that Debtors' Amended Plan may fail to comply with sections 11 U.S. Code §1129 (a)(3), (a)(4), (a)(5), (a)(8), (a)(9), (a)(10), (a)(11) and (a)(16), as well as 11 U.S. Code §1129 (b)(2)(B), in accordance with the facts asserted above.

22. Accordingly, Creditors respectfully request this Court decline to confirm Debtors' Amended Plan as written, and without consideration of the interests of Creditors as stated herein.

WHEREFORE, it is respectfully requested that this Court decline to confirm the Amended Plan as written, without taking into account the interests and considerations stated of the Creditors herein, along with such other and further relief as this Court deems just and proper.

Dated: March 18, 2019

DORF & NELSON LLP

By:



Jessica J. Kastner, Esq.

Jonathan B. Nelson, Esq.

Attorneys for ROBERT K.Y. CHAN and

You Gotta Have Faith LLC

555 Theodore Fremd

Rye, New York 10580

Tel: (914) 381-7600